

SUPERIOR COURT SAN DIEGO COUNTY
State of California
Judicial Council Coordinated Proceeding
Natural Gas Anti-Trust Cases1, 11, 111, 1V,
JCCP Nos. 4221,4224, 4226, and 4228.

February 18, 2005

TENTATIVE RULING:

The Court issues the following tentative ruling on the motion for access to claim forms submitted in connection with the El Paso settlement (the “Claim Form Motion”), and the motion for leave to serve interrogatories on certain unnamed class members (the “Interrogatory Motion”) in the Judicial Council Coordinated Proceedings (JCCP) Nos. 4221, 4224, 4226, and 4228, the Natural Gas Anti-Trust Cases I, II, III & IV as follows:

The Court denies the Claim Form Motion, as the information sought is not only protected by the mediation privilege, but also by a Court order restricting its use for any purpose outside the mediation. Additionally, the Claim Form Motion is premature. The Court also denies the Interrogatory Motion, as discovery of damages before trial is very limited in class actions, and the Interrogatory Motion is premature.

Defendants assert several arguments that the “real-world” information they seek regarding the natural gas business transactions of the non-core gas settling parties should be disclosed. But none of their reasons is persuasive. First, Defendants argue that they need this information to fully challenge Plaintiffs’ and (presumably) their expert’s, Dr. Safir, multi-dollar damages claim. However, in this case, the Court and counsel have had numerous discussions regarding the need or desirability to bifurcate the trial of this case and try the damages issues after liability has been established. Therefore, *if* Dr. Safir has relied on the claim-form information in reaching his conclusion on the issue of damages such that it would be unfair to allow him to testify without

providing the supporting information to Defendants, the Court will entertain a discovery motion at that time for this limited purpose.

Defendants further argue that the claim-form information is not protected by the mediation privilege because it was submitted to the Court-Appointed Mediator some time after the mediation was successfully completed. This argument is, however, unavailing. The Mediation Privilege (California Evidence Code section 1119(b)) protects disclosures that are made “pursuant to a mediation” And here it is certain that the claim forms would not have been prepared, let alone submitted, absent the mediation.

Lastly, it appears that the settling parties were very concerned about disclosing the information set forth in the claim forms, as it constitutes trade secret information. In fact, they were so concerned that the Court (Judge Haden, presiding) entered an order promising, in essence, that the information would not be disclosed for any non-mediation purpose. In sum, at this stage of the litigation, the Court is not inclined to even consider countering the order of the Honorable Judge Haden. *Darlene Kerns v. CSE Insurance Group*, 106 Cal. App.4th 368 (2003). Lastly, although the Court does not fault Defendants for attempting to gain an accurate picture of the global damages sought in this case, discovery on unnamed parties in a class action is very limited, especially pre-trial discovery.

For this last reason, the Court also denies Defendants’ Interrogatory Motion. Moreover, given that the proposed interrogatories admittedly address the issue of damages, and that the case is likely to be bifurcated such that Plaintiffs must first establish liability in order to proceed to the damages phase of the case, the Court denies the Interrogatory Motion, as premature.